

Serial No. 09/888,837
Docket No. MICRODOSE 00.01
AMENDMENT F (After Final) (Remarks Only)

REMARKS

Before considering the specific art rejections, it is noted the Examiner, on page 2 of the Detailed Action, makes reference to Abrams et al. (hereafter Abrams), column 8, lines 40-50, and column 7, lines 45-55, as teaching a release film which is punctured. The references to Abrams, column 7, lines 45-55, and column 8, lines 40-50, are believed to be misplaced. Column 7, lines 45-55, makes no reference at all to a release film or wells. And, column 8, lines 40-50, comprise claims 10-12, in part. It is believed the Examiner may have intended to refer to Abrams U.S. Patent No. 6,026,809, the parent to Abrams Patent No. 5,694,920, and the following discussion is based on that belief.

The Examiner's reliance on Abrams '809 is misplaced. Abrams '809 teaches a top layer or release film 221. According to Abrams '809, release film 221 is peeled off to expose the wells:

"In use, release film 221 is peeled from the tape 218, whereby to expose wells 220, one at a time, as the film is advanced through the cartridge, and the release film 221 is collected on take-up spool 226." (Abrams' '809, column 8, lines 49-52).

There is no discussion in Abrams '809, column 8, lines 40-50, of puncturing a release film.

Abrams '809, column 7, lines 45-55, admittedly talks about puncturing. However, here the teaching is to package the powder medication in individual capsules 34 which are introduced into the inhaler housing 18 through a panel 32 located in the rear of the housing (see column 5, lines 35-40). (See also column 7, lines 48-50).

So, Abrams teaches two embodiments, a first embodiment in which individual capsules 34 containing a powder medication are introduced into an inhaler through a movable panel 32, and opened by puncturing, and a second embodiment comprising a coiled tape having a plurality of spaced bubbles or wells carrying a dry powder, covered by a release film which is

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Serial No: 09/888,837

Docket No. MICRODOSE 00.01

AMENDMENT F (After Final) (Remarks Only)

peeled back to expose the powder. These are two different and distinct embodiments in which the capsules and the tape are not interchangeable, and cherry picking as the Examiner has done would result in an inoperative device!

Turning to the specific rejections, considering first the rejection of claims 1, 3, 8 and 13-15, as obvious from Abrams' '920 in view of Casper, the Examiner takes the position that Abrams discloses the invention as claimed with the exception of disclosing a coil tape that is flexible. However, as noted above, Abrams does not begin to teach Applicant's claimed invention. At best, Abrams teaches one embodiment in which individual capsules are loaded through a panel and punctured, and a second embodiment in which a coil tape is opened by stripping a release film. Thus, contrary to the Examiner's position, Abrams does not disclose Applicant's invention as claimed "with the exception of disclosing a coil tape that is flexible."

Casper does not supply the missing teachings to Abrams. As the Examiner explains, Casper is relied on for providing a coil tape that is flexible. However, beyond that common touchstone, Casper is quite remote. As argued previously, Casper et al. teaches driving a single puncture tool or lancet 56 completely through a medicament filled blister 42, i.e. through both the top and bottom elements forming the blister. In Casper et al., the medicament may then be drawn from the punctured blister by gravity and vacuum. There is no teaching or suggestion within the four corners of Casper et al. of a vibrator, or of controlling particle size by breaking up the particles by vibration, and filtering the particles through the puncture holes. Thus, no combination of Abrams and Casper et al. reasonably could be said to achieve or render obvious independent claim 1, or claim 3, 8 and 13-15 which depend thereon.

The rejection of claim 9 as obvious from Abrams in view of Pera likewise is in error. Claim 9 is dependent on claim 1. The deficiencies of the primary reference Abrams vis-à-vis

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Serial No. 09/888,837

Docket No. MICRODOSE 00.01

AMENDMENT F (After Final) (Remarks Only)

claim 1 are discussed above. Pera does not supply the missing teachings to Abrams to achieve or render obvious claim 1 or claim 9. Pera has been cited as teaching dispensing an antioxidant vitamin by inhalation. However, as argued previously, Pera nowhere teaches or suggests any structure. Thus, the structural deficiencies of Abrams discussed above clearly are not supplied by Pera. Accordingly, no combination of Abrams and Pera can be said to achieve or render obvious claim 1 or claim 9 which depends thereon, and, the rejection of claim 9 as obvious from Abrams in view of Pera is in error.

The rejection of claims 10 and 11 as obvious from Abrams in view of Hendricks is likewise an error. Claims 10 and 11 are dependent on claim 1. The deficiencies of the primary reference Abrams vis-à-vis claim 1 are discussed above. It is not seen that Hendricks supplies the missing teachings to Abrams to achieve or render obvious claim 1 or claims 10 and 11 which depend thereon. Hendricks has been cited as teaching a dry powder inhaler in which the material comprises a hormone or steroid. However, Hendricks' inhaler is radically different in construction from Abrams. Nowhere is there any teaching or suggestion within Hendricks as to how the Abrams inhaler should be modified, i.e., to form a flexible coiled tape blister pack having a top spaced crowned area formed of a frangible element through which puncture holes are formed and act as filters to prevent the ejection of over sized particles of the material as required by Applicant's claims. Accordingly, no combination of Abrams and Hendricks can achieve or render obvious claim 1 or claims 10 and 11 which depend thereon, and, the rejection of claims 10 and 11 as obvious from Abrams in view of Hendricks also is in error.

The rejection of claim 12 is obvious from Abrams in view of Shyjan likewise is in error. Claim 12 is dependent on claim 1. The deficiencies of the primary reference Abrams are discussed above. It is not seen that Shyjan supplies the missing teachings to Abrams to achieve

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.682.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

Serial No: 09/888,837

Docket No. MICRODOSE 00.01

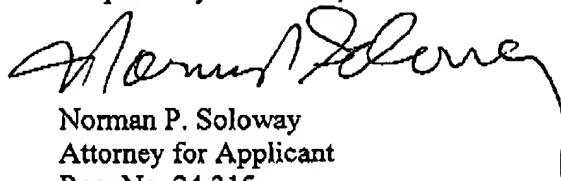
AMENDMENT F (After Final) (Remarks Only)

or render obvious claim 1 or claim 12 which depends thereon. Shyjan has been cited as teaching a bioactive material. However, Shyjan, like Pera contains absolutely no teaching or disclosure of inhaler structure or any form of blister back for use with an inhaler structure. Thus, no combination of Abrams and Shyjan could be said to achieve or render obvious claim 1 or claim 12 which depends thereon. Accordingly, the rejection of claim 12 as obvious from Abrams in view of Shyjan also is in error.

The foregoing Amendment makes no claim changes and thus should be entered as a matter of right. Accordingly, reconsideration of the rejection of the claims and allowance are respectfully requested.

In the event there are any fee deficiencies or additional fees are payable, please charge them (or credit any overpayment) to our Deposit Account Number 08-1391.

Respectfully submitted,



Norman P. Soloway
Attorney for Applicant
Reg. No. 24,315

CERTIFICATE OF TRANSMISSION VIA FACSIMILE

I hereby certify that this correspondence is being sent via facsimile to EXAMINER Nihir Patel of the United States Patent and Trademark Office at facsimile number (571) 273-8300, on November 22, 2005, from Tucson, Arizona.

By M. Diane Aubé

NPS:dd

HAYES SOLOWAY P.C.
3450 E. SUNRISE DRIVE
SUITE 140
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567